

PT 99-63

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

AMERICAN LEGION POST #1049	)	Docket #	97-20-6
Applicant	)	A.H. Docket #	98-PT-39
)		
v.	)	Parcel Index #	14-09-257-014
	)	a/k/a	20-06-038-007-000
)		
THE DEPARTMENT OF REVENUE	)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: James K. Zerkle, Heckenkamp, Simhauser, Ward & Zerkle, for American Legion Post #1049

Synopsis:

The hearing in this matter was held in Springfield, Illinois on September 10, 1998, to determine whether or not DeWitt County Parcel Index No. 14-09-257-014 a/k/a 20-06-038-007-000 qualified for exemption during the 1997-assessment year.

Mr. Robert Walters, Commander of American Legion Post #1049 (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant. The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1997 assessment year; secondly, whether the applicant is a Veterans' organization; and lastly, whether this parcel was used by the applicant for charitable purposes that were also patriotic and civic during the 1997

assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned this parcel during all of the 1997 year. It is also determined that the applicant is a Veterans' organization. Finally, it is determined that the applicant did not use the parcel for charitable purposes that were also patriotic and civic during the 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that DeWitt County Parcel Index No. 14-09-257-014 also known as 20-06-038-007-000 did not qualify for a property tax exemption for the 1997 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 10)

2. On January 29, 1998, the Department received a property tax exemption application from the DeWitt County Board of Review for Permanent Parcel Index No. 14-09-257-014 a/k/a 20-06-038-007-000. The applicant had submitted the request, and the board recommended granting a full year exemption for the 1997 assessment year. The Department assigned Docket No. 97-20-6 to the application. (Dept. Grp. Ex. No. 2)

3. On April 2, 1998, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. On April 18, 1998, the applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing held at the Department's offices in Springfield, Illinois, on September 10, 1998, was pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the subject parcel by a warranty deed dated October 30, 1976. (Dept. Grp. Ex. No. 2 p. 3)

7. Located on the subject parcel is a 1920 square-foot one-story building. The

interior of the building contains a large open room, a small kitchen, a long hallway that leads into the restrooms and the furnace room, and a rear storage room. The kitchen contains a couple of stoves, an oven, a microwave, and a refrigerator. (Dept. Grp. Ex. No. 2 pp. 1, 4; Tr. pp. 46-47)

8. The building is used for monthly meetings of the applicant and its auxiliary. It is also used for meetings of the sons of the American Legion. Memorial Day ceremonies in inclement weather are also held there. Occasionally during the summer a member may hold a family reunion in the building. Other community organizations also occasionally use the building for their meetings. No rent is charged for that usage. A clean-up fee of \$15.00 is imposed if the party using the premises leaves a mess. The building is also used to host bake sales by various school classes and clubs. The Boy Scouts occasionally meet there. (Dept. Grp. Ex. No. 2 pp. 1, 4, Dept. Ex. No. 4; Tr. pp. 18-19, 36-42, 47-48, 56)

9. The applicant stores flags,

weapons, uniforms, and other materials used for ceremonies in the building. It is also a storage area for a wheelchair, canes, an aluminum walker, crutches, and a hospital bed, all available to the general public free of charge. The building is available to stranded travelers during bad weather. The kitchen is stocked with coffee, canned goods, bedding, and basic toiletry items for this purpose. There is no bar on the premises. The applicant has various ribbons, metals, and plaques received by its members displayed in the building. (Dept. Grp. Ex. No. 2 pp. 1, 4; Dept. Ex. No. 4; Tr. pp. 20-27, 42, 52 - 53)

10. The applicant participates in the "gifts for yanks" program. The program helps buy Christmas gifts for veterans that are in the veteran's home in Danville, Illinois. The applicant also supplies those veterans with other necessities on a

monthly basis. (Tr. pp. 27- 33, 53 - 55)

11. The applicant also assists the local Lions Club with the Thanksgiving food basket program for the poor, a community outreach program to the needy. (Tr. pp. 33 - 35, 55- 56)

12. Applicant's membership qualification is that any person shall be eligible for membership in the American Legion who was a member of the Army, Navy, Marine Corps, Coast Guard, or Air force of the United States¹.

13. The applicant had 54 members in 1997. The auxiliary had 38 to 40 members. (Tr. p. 48)

14. The applicant was granted a temporary charter by the national headquarters of the American Legion on June 11, 1946. The permanent charter was granted on January 23, 1948. The Constitution of the American Legion states in its preamble:

For God and Country, we associate ourselves together for the following purposes:

To uphold and defend the Constitution of the United States of America; to

¹ and assigned to active duty at some time during the following periods; April 6, 1917 to November 11, 1918; December 7, 1941, to December 31, 1946; June 25, 1950, to January 31, 1955; December 22, 1961, to May 7, 1975; August 24, 1982, to July 31, 1984; December 20, 1989 to January 31, 1990; August 2, 1990, to the date of cessation of hostilities as determined by the Government of the United States, all dates inclusive, or who, being a citizen of the United States at the time of his entry therein, served on active duty in the armed forces of any of the governments associated with the United States during any of said periods; provided, however, that such service shall have been terminated by honorable discharge or honorable separation, or continued honorably after said periods; provided, further, that no person shall be entitled to membership who, being in such service during any of said periods, refused on conscientious, political or other grounds to subject himself to military discipline or unqualified service.

maintain law and order, to foster and perpetuate a one hundred percent Americanism; to preserve the memories and incidents of our Association in the Great Wars; to inculcate a sense of individual obligation to the Community, State and Nation; to combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and good will on Earth; to safeguard and transmit to posterity the principles of justice, freedom and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness. (Applicant's Grp. Ex. No. 1; Tr. pp. 14-17)

15. The attorney for the applicant requested leave to submit a brief in this matter. Such leave was granted. A brief was not submitted. (Tr. pp. 60-61)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the authority granted by the Constitution, the legislature has enacted statutory exemptions from property tax. The provision at issue is found at 35 **ILCS** 200/15-145 and states:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel.

Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

In the case of North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967), the Supreme Court of Illinois held that the predecessor statute to 35 ILCS 200/15-145² was constitutional and that the provision granting an exemption to a veteran's organization required the organization's utilization encompass all three of the required uses: civic, patriotic, and charitable. The Court went on to hold that the applicant's usage of the property for its meetings, wedding receptions, meetings of various other groups, and the bar maintained on the premises primarily for members, necessitated a finding by the Court that the primary use of the property was not exempt. The Court specifically stated:

Plaintiff has not shown, however, that the primary use of the premises was in furtherance of these charitable purposes. The record shows that the premises are used primarily for the following purposes: meetings, both business and social, of the plaintiff and its various auxiliaries; wedding receptions of members of the Post and of third parties; dinners and social parties for plaintiff and its auxiliaries; meetings of boy scout troops; . . . Id. at 235 (Emphasis added)

Although I agree that the foregoing conditions show a dissimilarity in applicant's activities from those of the applicant in North Shore Post No. 21, that alone does not authorize the granting of a property tax exemption in this case. There is no dispute that the applicant is a veteran's organization. There is also no dispute that the applicant's endeavors are certainly commendable and benefit a great number of people. The Court has stated, however, that the use must be civic, patriotic, and charitable.

² At the time North Shore Post No. 21 was decided, the exemption for veterans' organizations was found at Ill. Rev. Stat. 1963, chap. 120, par. 500. 18.

The applicant uses the property for social purposes when it conducts the meetings, dinners, and other activities it holds on the premises. The applicant has failed to show that the activities it conducts satisfy the three-prong test of charitable, civic, and patriotic usage that the statute requires.

I therefore conclude that North Shore Post No. 21 is the controlling case law regarding the statutory language at issue. Because taxing statutes are to be strictly construed and property tax exemptions are the exception, I find that the applicant has failed its burden of proof to qualify for an exemption.

It is therefore recommended that DeWitt County Permanent Parcel Index No. 14-09-257-014 also known as 20-06-038-007-000 remain on the tax rolls for the 1997 assessment year and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
May 14, 1999